

SEP 17 2014

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION
MOTION BY A PERSON IN FEDERAL CUSTODY
TO VACATE, SET ASIDE, OR CORRECT SENTENCE UNDER 28 U.S.C. § 2255

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|--|---------------------------|---------------------------|
| UNITED STATES DISTRICT COURT | | Division McAllen Division |
| Name of Movant/Defendant ORLANDO AVALOS | Prisoner No. 20904-379 | Case No. 7:12CR01512 |
| Place of Confinement (including address) Federal Correctional Complex-Low P.O. Box 26020 Beaumont, Texas 77720 | | |
| UNITED STATES OF AMERICA v. ORLANDO AVALOS (name under which convicted) | | |

MOTION

M-14-832

1. Name and location of court which entered the judgment of conviction under attack: U.S. District Court Southern District of Texas McAllen
2. Date of judgment of conviction: August 30, 2013
3. Length of sentence: 71 months, 4 years supervised release
4. Nature of offense involved (all counts): _____

5. What was your plea? (Check one)

- (a) Not Guilty ☐
- (b) Guilty ☒
- (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details: N/A

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐ N/A
- (b) Judge only ☐

7. Did you testify at the trial? Yes ☐ No ☐
N/A

RMH/
DR

8. Did you appeal from the judgment of conviction to the Fifth Circuit Court of Appeal?

Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Result: N/A

(b) Date of result and mandate: N/A

10. Did you file a petition for rehearing?

Yes ☐ No ☐ N/A

11. If you did file a petition for rehearing, provide the date and result of the petition: _____

N/A

12. Did you file a petition for certiorari review?

Yes ☐ No ☐ N/A

13. If you did file a petition for certiorari review, provide the date and result of the petition: _____

N/A

14. Have you previously filed any post-conviction petitions, applications or motions, including previous § 2255 motions, with respect to this judgment in any federal court?

Yes ☐ No ☒

15. If your answer to 14 was "yes," give the following information:

(a) (1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐ N/A

(5) Result: N/A

(6) Date of result: N/A

(b) If you filed more than one such petition, please include the same information requested in 11(a) on a separate sheet of paper. N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on your petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action of any petition, application or motion, explain briefly

why you did not: N/A

16. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

A. Ground one: Defense Counsel Rendered Ineffective Assistance

of Counsel in Violation of the Sixth Amendment throughout

his Criminal Proceeding
Supporting FACTS (state *briefly* without citing cases or law): Failed to file pretrial
motions on his behalf; failed to provide him with copies
of his discovery, failed to go over the discovery and
the plea agreement with him. Failed to provide him with
copies of his plea agreement. His plea of guilty was
involuntary because the court sentenced him to 71 months
while it was his understanding that he would be sentenced
to 60 months imprisonment. Counsel failed to object to
the enhancement at sentencing. Counsel failed to go over
the PSI with him. Counsel failed to file a notice of
appeal on his behalf even though he asked to file it.

B. Ground two: Defense Counsel's failure to investigate the case

Constitutes ineffective assistance of counsel

Supporting FACTS (state *briefly* without citing cases or law): Counsel failed to
investigate any and all confidential sources involved
in his case. Failed to request a Giglio and Brady request
for production of evidence by the government. Failed
to properly conduct legal research on his case and to
interview witnesses.

C. Ground three: Avalos is Entitled to an Evidentiary Hearing

Supporting FACTS (state *briefly* without citing cases or law): _____

Avalos requests this Honorable Court to conduct an
Evidentiary Hearing to resolve the issues presented
herein in the best interest of justice.

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

17. As to the grounds listed in 16A, B, C, and D, explain whether any grounds were previously presented, and for those that were not previously presented, state *briefly* your reasons for not presenting them: _____

The ground presented herein are properly presented as they
involve violations of constitutional rights.

18. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

19. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

20. What relief do you request from this Court? Avalos requests this Honorable Court to grant him an evidentiary hearing or in the alternative to vacate his sentence and/or any other relief this court deems just and appropriate.

Wherefore, movant prays that the Court grant the relief to which he or she may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty or perjury that the foregoing is true and correct. Executed on:

8/29/2014
(Date)


Signature of Movant/Defendant

IF MAILED BY PRISONER:

I declare or state under penalty of perjury that this petition was (check one):
☒ delivered to prison officials for mailing, or ☐ deposited in the prison's internal mail system on:

August 29, 2014 (date).


Signature of Movant/Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

ORLANDO AVALOS
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

§
§
§
§
§
§
§

Case No. 7:12CR01512

MOTION FOR LEAVE TO REQUEST AN EXTENSION OF TIME
TO FILE A MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO VACATE, SET-ASIDE, OR CORRECT A SENTENCE
PURSUANT TO 28 U.S.C. § 2255

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW INTO COURT ORLANDO AVALOS, Petitioner, acting
in Propria Persona, and respectfully files his Motion for Leave
to Request an Extension of Time to File a Memorandum of Law
In Support of Motion to Vacate, Set-Aside, or Correct a
Sentence Pursuant to 28 U.S.C. § 2255.

In support thereof, Petitioner states as follows:

1. Petitioner has diligently been trying to obtain all
of his legal documents from his defense attorney who represented
him throughout his criminal proceeding, but defense counsel
has failed to provide him with the needed documents to file
a meritorious 28 U.S.C. § 2255 Brief.

2. Petitioner requests an additional thirty (30) day
extension of time to give Petitioner time to obtain his legal

documents from defense counsel by sending his relatives to his office and obtain said documents in order to prepare and file a meritorious Memorandum of Law In Support of his Motion pursuant to 28 U.S.C. § 2255.

3. This extension of time is being requested in the best interest of justice and not to circumvent this Honorable Court's rules and regulations pertaining to the filing of 28 U.S.C. § 2255 Motions.

WHEREFORE, Premises Considered, Petitioner prays this Honorable Court to grant him a 30 day extension of time to file his Memorandum of Law In Support of his Motion Pursuant to 28 U.S.C. § 2255.

Done this 29th day of August, 2014.

Respectfully submitted,



Orlando Avalos
Reg. No. 20904-379
Federal Correctional Complex-Low
P.O. Box 26020
Beaumont, TX 77720

CERTIFICATE OF SERVICE

I ORLANDO AVALOS, hereby declare under penalty of perjury, pursuant to 18 U.S.C. § 1746, that on this 29th day of August 2014, I mailed a copy of Motion pursuant to 28 U.S.C. § 2255 and Motion for Leave to Request an Extension of Time to File a Memorandum of Law In Support of Motion to Vacate, Set-Aside, or Correct a Sentence pursuant to 28 U.S.C. § 2255, via First Class Mail, addressed to the following:

U.S. District Court Clerk
Bentsen Tower, Suite 1011
1701 W. Business Hwy. 83
McAllen, TX 78501-5178



Orlando Avalos
Reg. No. 20904-379
Federal Correctional Complex-Low
P.O. Box 26020
Beaumont, TX 77720

CLARENCE AVALOS
REG. NO. 20904-379
FEDERAL BUREAU OF INVESTIGATION
P.O. BOX 26020
BEAUMONT, TX 77720

TO: DIRECTOR, FBI
FROM: CLARENCE AVALOS
SUBJECT: [illegible]

⇄ 20904-379 ⇄

U S District Court
Bentzen Tower, Suite 1011
1701 W Business Highway 83
McAllen, TX 78501
United States

